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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 826

LOCAL NO. 332, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, a Labor Union With Offices at Flint, Genesee County, Michigan, and EDWARD GORAM, BASIL MEEKER and HOLLIS CARSON, Individually and as Members of Said Local Union,
Petitioners,

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY,
a Michigan Corporation,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals for the Sixth Circuit.

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Petitioners,

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY,
a Michigan Corporation,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Court of Appeals for the Sixth Circuit.

Petitioners request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on December 12, 1956.

CITATIONS TO OPINIONS BELOW.

The memorandum opinion of the Federal District Court for the Eastern District of Michigan is unreported and is printed in Appendix B, *infra*, pp. 13-22. The order of the Court of Appeals for the Sixth Circuit, affirming the District Court's judgment is unreported and is printed in Appendix B, *infra*, pp. 12-13.

JURISDICTION.

The order of the Court of Appeals, affirming the District Court's judgment, was entered on December 12, 1956. This Court's jurisdiction is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED.

Whether an action, initiated upon the complaint of a railroad, to enjoin the striking employees of a lumber company from engaging in certain activities in the vicinity of a side track leading to the lumber company is a case "involving or growing out of a labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act (47 Stat. 73 [1932], 29 U. S. C., Sec. 113 [1956]).

STATUTES INVOLVED.

The statutory provisions involved are Sections 1, 7 and 13 of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U. S. C., Secs. 101, 107 and 113 (1956). They are printed in Appendix A, *infra*, pp. 9-11.

STATEMENT.

(The Record in the Court below consisted of an "Agreed Statement of Case" submitted pursuant to Rule 76 of the Federal Rules of Civil Procedure. The agreed statement is reproduced as Appendix C to this Petition and is filed herein in lieu of the original Record under Rule 21 (3) of this Court. References to the Record (R.) are references to the pages of Appendix C.)

The Wolohan Elevator and Lumber Company (herein referred to as the Lumber Company) is located in Davison, Michigan. In the course of a labor dispute (R. 30, 32, 33, 36) between the Lumber Company and the Petitioners (herein referred to as the Union), the Union engaged in peaceful picketing (R. 31, 34) on a public street adjacent to property leased by the Lumber Company from the Respondent, Grand Trunk Western Railroad Company (herein referred to as the Railroad) (R. 34). A side track utilized by the Railroad to make deliveries to the Lumber Company intersected the street upon which the Union was picketing (R. 34).

On December 16, 1955, three picketers were walking at regular intervals back and forth on the street referred to above and at the same time were crossing the Railroad's side track (R. 34). They traveled a total of about fifteen feet, including the distance between the rails, as they picketed (R. 34). The picketing was peaceful and the legend truthful (R. 34).[1]

As a result of the picketing the Railroad was prevented from making delivery of five carloads of merchandise to the Lumber Company (R. 34). Events similar to those occurring on December 16, 1955, also occurred on December 19 (R. 35).

The Railroad filed a Bill of Complaint, dated December 27, 1955, in the Federal District Court for the Eastern District of Michigan demanding that a temporary and permanent injunction be issued restraining the Union's picketing (R. 30, 33).[1a] No allegation or finding that the public officers charged with the duty to protect the Railroad's property were unable or unwilling to do so was made. As an affirmative defense, the Union's answer alleged that the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U. S. C. Sec. 101 (1956) (herein referred to as the Act) deprived the District Court of jurisdiction to issue such an order (R. 33). This defense was rejected principally on the theory that the absence of a labor dispute between the Railroad and the Union rendered the Act inapplicable (Ap. B, p. 19; R. 36). A temporary restraining order was issued on January 6, 1955 (R. 38).

On December 12, 1956, the Court of Appeals for the Sixth Circuit affirmed the District Court's judgment (Ap. B, p. 12). The Court of Appeals, apparently adopting the District Court's reasoning, concluded—without further ex-

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[1] The picket sign read: "Employees of Wolohan Company out on strike against substandard wages and working conditions" (R. 34).

[1a] The jurisdiction of the District Court was sustained "under the commerce clause of the Constitution and Section 1337, Title 28, U. S. Code" (Ap. B., p. 25).

planation—"that the injunction so issued is not in violation of the Norris-LaGuardia Act . . ." (Ap. B, p. 13).

I. THIS CASE IS ONE WHICH GROWS OUT OF A LABOR DISPUTE WITHIN THE MEANING OF SECTION 13 OF THE NORRIS-LA GUARDIA ACT.

Section 7 of the Act deprives the federal courts of jurisdiction to issue a temporary injunction in any case involving or growing out of a labor dispute unless certain findings are made. One of the required findings is:

> "That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 47 Stat. 71 (1932), 29 U. S. C. 107 (e) (1956).

There is neither allegation nor proof, in this case, that the public officers charged with the duty to protect the Railroad's property were unable or unwilling to provide adequate protection.

A. Both the Union and Railroad Have Economic Interests in the Industry Where the Labor Dispute Exists.

Section 13 (a) of the Act defines eight distinct and independent instances in which a case shall be held to involve or to grow out of a labor dispute. The first one listed provides:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein. . . ." 47 Stat. 73 (1932), 29 U. S. C., Sec. 113 (a) (1956).

The phrase "direct or indirect interest" modifies "industry, trade, craft, or occupation." *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 93 (1940). *See also: United States v. Mine Worker*, 330 U. S. 258, 275 (1947); *Aetna Freight Lines v. Clayton*, 228 F. 2d

384, 386 (2nd Cir., 1955). The "interest" referred to in Section 13 (a) is an economic interest. *United States v. Mine Workers*, 330 U. S. 258, 275 (1947). Hence, a case must be held to grow out of a labor dispute if it involves persons who have direct or indirect economic interests in the industry where a labor dispute exists.[2]

Clearly demonstrated by the record is the existence of a labor dispute between the Union and Lumber Company (R. 30, 32, 33, 36). The Union's direct economic interest in the lumber industry is manifest. And an elaborate argument is not required to demonstrate that the Railroad has at least an indirect economic interest in the lumber industry.

This Court may judicially notice the fact that the Railroad obtains revenues from the transportation of freight to the Lumber Company. The record demonstrates that the Railroad was concerned over possible economic losses in the form of demurrage penalties in the event it failed to deliver the goods consigned to the Lumber Company (R. 32, 33, 35). The Railroad is the lessor of land occupied by the Lumber Company (R. 34). In addition, an intricate system of side tracks is utilized in the delivery of goods to the Lumber Company (R. 34-35). Genuine, indeed, is the Railroad's economic interest in the lumber industry.

Since both the Railroad and Union have genuine economic interests in the industry where the dispute exists, we submit that the applicability of the Act is patent. The District Court, and the Court of Appeals sub silentio, held that the Act applied only where both parties to the case have a direct or indirect interest in the labor dispute (R. 36). Such a construction, while shared by other Dis-

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[2] The word "indirect" is defined in Webster's New International Dictionary (Second Edition) as: "Not resulting directly from an act or cause but more or less remotely connected with, or growing out of, it . . . Syn. Devious, roundabout." Nothing in the legislative history of the Act suggests that the word "indirect" was used as a word of art.

trict Courts,[3] is in direct conflict with the decision of this Court in *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 93 (1940).

B. **The Union Has a Conflicting Interest in a Labor Dispute and Is Participating in the Dispute.**

A second and *independent* statutory test, requiring the invocation of the Act's prohibitions in this case, provides:

> "A case shall be held to involve or to grow out of a labor dispute . . . when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section). 47 Stat. 73 (1932), 29 U. S. C., Sec. 113 (a) (1956).
>
> "A person or association shall be held to be a person participating or interested in a labor dispute *if relief is sought against him or it*, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs . . ." 47 Stat. 73 (1932), 29 U. S. C. 113 (b) (1956). (Emphasis ours.)

Under this provision of the Act only two conditions need be satisfied: (1) The case must involve a conflicting interest (2) of a person participating in a labor dispute. The conflicting interest is found in the Union's desire to

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[3] *Southern Pacific Co. v. Cannery Warehousemen*, 127 F. Supp. 703 (D. C. Or. 1954); *Erie Railroad Co. v. Local No. 1286*, 117 F. Supp. 157 (W. D. N. Y. 1953); *Louisville & N. R. Co. v. Local Union No. 432*, 104 F. Supp. 748 (S. D. Ala. 1952); *Illinois Cent. R. Co. v. International Brotherhood*, 90 F. Supp. 640 (W. D. La. 1950); *Atchison, Topeka & Santa Fe Ry. v. Shopmen's Local Union No. 546*, 18 CCH Labor Cases, Par. 65,857 (W. D. Okla. 1950); *Atchison, Topeka & Santa Fe Ry. v. Sillampa*, 29 CCH Labor Cases, Par. 65,843 (D. C. N. M. 1949); *Pacific Gamble Robinson Co. v. Minneapolis & St. P. Ry.*, 85 F. Supp. 65 (D. C. Minn. 1949). But *cf.: Matson Navigation Co. v. Seafarers Union*, 100 F. Supp. 730 (D. C. Mary. 1951); *Great Northern Ry. Co. v. Lumber & Sawmill Workers Local Union*, 140 F. Supp. 393 (D. C. Mont. 1956), *aff'd* 232 F. 2d 628 (9th Cir. 1956), *cert. denied* October 8, 1956.

continue picketing whereas both the Railroad and Lumber Company wanted the picketing discontinued. The Union is a person participating in a labor dispute because "relief is sought against . . . it and . . . it is engaged in the same industry in which [the] dispute occurs." A second and independent basis of invoking the Act's restrictions therefore exists.

The Courts below apparently considered the Railroad's nominal lack of interest in the dispute between the Union and Lumber Company as being fatal to the Union's case (Ap. B., p. 13, R. 36). Section 13 (b), however, defines a person participating in a labor dispute as one *against* whom relief is sought.

Thus, the unambiguous language of Section 13 (b) makes it clear that the only relevant interest is that possessed by the defendant. In short, the Courts below disregarded the explicit definition contained in Section 13 (b) of the Act.

II. THE QUESTION RAISED BY THIS CASE IS OF A FREQUENTLY RECURRING NATURE AND HAS BEEN DECIDED IN A MANNER INCONSISTENT WITH THE DECISIONS OF THIS COURT.

The District Court decisions collected in note 3, *supra*, all of which involve substantially indistinguishable facts, point up the recurrent nature of the question here presented. These decisions, as well as the decisions in the instant case, are in direct conflict with the construction placed by this Court upon Section 13 of the Norris-LaGuardia Act. (See page 6, *supra*.)

Had this action been commenced by the Lumber Company, the applicability of the Act would be undisputable. The fact that the Railroad rather than the Lumber Company initiated the action was considered to be of great importance by the Courts below. But as demonstrated above, such a construction of the Act is palpably erroneous. (See pp. 4-6, *supra*.) Furthermore, this Court has ex-

pressly condemned stratagems designed to accomplish indirectly that which cannot be attained directly under the Act. *United States v. Hutcheson*, 312 U. S. 219, 235 (1941). *See also: Shivera v. Long Island Lighting Co.*, 296 N. Y. 26, 69 N. E. 2d 233, 234-35 (1946).

Perhaps no statute in the history of the American labor movement has been more widely acclaimed as a "Magna Carta" than the Norris-LaGuardia Act. The Act's definitional section is both comprehensive and specific. The elaborate definitions contained therein were designed to protect defendant labor unions from the federal injunction.[4] The case at bar, which is typical of many similar cases, demonstrates the widespread attack which is taking place upon the very parapet of the Act. We urge this Court to grant certiorari to the end that further encroachment upon the integrity of the Norris-LaGuardia Act may be prevented.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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[4] *Cf. Brotherhood of Ry. Trainmen v. Toledo Peoria & W. R. R.*, 321 U. S. 50, 65-66 (1944); Sen. Rep. 163, 72d Cong., 1st Sess., pp. 16-18 (1932); H. R. Rep. 669, 72d Cong., 1st Sess., pp. 7-8 (1932); 75 Cong. Rec. 4502, 4505-09, 4619-22, 4624-26, 4629, 4677, 4772, 4774, 4932, 4938, 5018, 5463, 5466, 5478, 5480, 5486, 5500, 5502, 5513-15.

APPENDIX A.

STATUTES INVOLVED.

Section 1 of the Norris-LaGuardia Act provides:

"No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter." 47 Stat. 70 (1932), 29 U. S. C., Sec. 101 (1956).

Section 7 of the Norris-LaGuardia Act provides, *inter alia:*

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 47 Stat. 71 (1932), 29 U. S. C., Sec. 107 (1956).

Section 13 of the Norris-LaGuardia Act provides:

"When used in this chapter, and for the purposes of this chapter—

"(a) A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occu-

pation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia." 47 Stat. 73 (1932), 29 U. S. C., Sec. 113 (1956).

APPENDIX B.

OPINIONS BELOW.

No. 12,854.

UNITED STATES COURT OF APPEALS
For the Sixth Circuit.

Local No. 332, International Brotherhood of Teamsters, etc., and Edward Goram, Basil Meeker and Hollis Carson, Individually and as Members of Said Local Union, Appellants, v. Grand Trunk Western Railroad Company, Appellee.	Filed Dec. 12, 1956, Carl W. Reuss, Clerk. Order.

Before Allen, Martin and McAllister, Circuit Judges.

This case came on to be heard on the oral arguments and the briefs of attorneys, on the record, the agreed statement and the judgment in the case;

And it appearing that District Judge Freeman did not enjoin peaceful picketing but only enjoined and restrained the appellant labor union and its members and the named individual appellants from interfering with the access of the appellee railroad company, over its rails and connecting tracks, to the industrial plant involved in this litigation; from loitering and congregating or marching in or near the right-of-way of the appellee leading to the plant, in such manner and in such numbers as to interfere with or be intended to interfere with the lawful ingress and egress to and from the plant by the appellee carrier in

the lawful discharge of its duties of transporting by rail commodities in interstate commerce; and by requiring appellants to keep a sufficient distance from the tracks of the appellee so as not to interfere with the safe operation of its cars or locomotives over the aforementioned tracks;

And it appearing that the injunction so issued is not in violation of the Norris-LaGuardia Act [U. S. Code Supp. VII, Title 21, sections 101-115], or of any other applicable law;

The judgment of the United States District Court is affirmed; and it is so ordered.

Enter:

/s/ John D. Martin,
United States Circuit Judge.

United States of America.

In the
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan
Northern Division.

[Formal Title Omitted.]

The Court: This is a suit filed by Grand Trunk Western Railroad Company, a Michigan Corporation, as plaintiff, against Local No. 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a Labor Union, with offices at Flint, Genesee County, Michigan; and Edward Goram, Basil Meeker, and Hollis Carson, individually and as members of said Local Union, as defendants.

The Complaint seeks injunctive relief, and, more specifically, seeks to restrain the defendants, its agents, representatives or employees from interfering with the delivery

of certain merchandise by plaintiff to the Wolohan Elevator and Lumber Company in Davison, Michigan.

This particular hearing grows out of the motion filed for a temporary injunction seeking substantially, almost specifically, the same relief as asked for in the Complaint. I note that the Bill of Complaint was filed on December 27, 1955, and there have been no responsive pleadings and no affidavits filed in opposition to the motion. I mention the date of filing because there would not be the required time elapsed between the filing of the bill and the filing of an Answer prior to the time of hearing.

Testimony was taken at the hearing on this matter. Plaintiff's Assistant Divisional Superintendent testified that on December 16, 1955, the Railroad attempted to place certain loaded cars consigned to and for delivery to the Wolohan Company, to the consignee Wolohan. In substance, the witness, who was Edward P. Rose, testified that the train crew, with several cars detached from the train, attempted to deliver the cars to the yard of the Wolohan Company over a certain track which was owned by the plaintiff and leased to Wolohan, in the nature of a sidetrack or spur-track leading off of another so-called straight track, which in itself was a sidetrack off the main line. Rose testified that he was in the vicinity of the Wolohan property and near the track leading into the lumber yard of Wolohan and Company when the train crew moved the cars to the point just west of Genesee Street, which was something like a block or two blocks away from the lumber yard itself, when the train crew were unable to complete the delivery of the cars by reason of certain pickets marching back and forth across the track leading into the lumber yard and sometimes standing between the rails of the track.

It appears, and it seems to be undisputed, that a labor dispute had arisen between Wolohan and Company and

its employees, as a result of which a strike was then in progress, and the Wolohan premises were being picketed by the defendant Local. The testimony of the witness Rose indicated that the pickets were marching back and forth across the particular track in question leading to the lumber yard, a few feet, to a point approximately five feet north, and then back across the track to a point approximately five feet south of the rails—in other words, covering a distance of approximately 15 feet in their marching, at the time the train crew attempted to deliver the cars consigned to Wolohan. I understand these cars were loaded with lumber, and I think the testimony showed that one of them was possibly loaded with feed. It appears that the Wolohan Company was engaged in the business of selling lumber and feed. It was stipulated that the same circumstances prevailed a few days later, and I think on December 19, when the plaintiff railroad again attempted to deliver some loaded cars of merchandise to the Wolohan Company, and possibly on a still later date, although that was not mentioned in the testimony or by stipulation, but was set forth in the Bill of Complaint.

In other words, it appears substantially that the plaintiff railroad, which was a common carrier engaged in interstate commerce, on the several dates in question, had in its possession for delivery to the Wolohan Company cars of merchandise consigned to that company, which had originated outside of the State of Michigan, and which cars were in interstate commerce.

It also appears from the testimony that the railroad, in event delivery of this merchandise was not made, would be subject to demurrage penalties, and possibly other damages, for failure to make delivery. Therefore, the railroad files this suit, seeking to restrain the defendant Union and some of its officers and employees and members from picketing so as not to interfere with delivery of the mer-

chandise in question over the tracks used by the plaintiff railroad in making delivery to the Wolohan Company.

It also appears that the picketing was not violent, there was no violence, and that the picketing was peaceful.

The Assistant Divisional Superintendent testified that he directed the train crew, or, rather, the conductor of that crew, who was in charge of the train crew, to take the cars into the Wolohan Company if possible, and to make delivery of the cars in the lumber yard, if the pickets did not obstruct the track. The testimony of the plaintiff's witness further indicated that the train crew stopped short of the lumber yard and near the intersection of Genesee Street, because of the possible danger of injuring some of the pickets if the cars were moved forward towards the lumber yard. This part of the testimony was denied by defendant's witness, Frank Pierkor, Business Agent of the Defendant Local, who testified, as I recall, that the pickets at no time stood between the rails of the tracks in question, and at all times stood far enough removed from the rails so as to permit the cars to be moved along the sidetrack without the possibility of injuring any of the pickets.

The plaintiff also submitted to the Court, in support of the testimony of its witness, oral testimony, a short movie allegedly taken of the conditions existing at or near the crossing of Genesee Street, on, I believe, December 19, which movie tended to support to some extent the oral testimony of the plaintiff.

The plaintiff railroad claims the right to deliver its merchandise, and its duty to deliver the merchandise in question, and invokes the jurisdiction of this Court under the commerce clause of the Constitution. The defendants deny, as the Court has already pointed out, the essential facts relied upon by the plaintiff for the injunctive relief, but also urged the Court to consider certain defenses,

even though the facts claimed are true. Substantially, the defendant claims that this Court is without jurisdiction in this matter, first, because of the lack of claim of diversity of citizenship, and also because of the lack of any allegation in the pleadings that the subject matter in dispute is of the value of more than $3,000.

Then, secondly, the defendant claims, and I think it is a more substantial claim, that this Court does not have jurisdiction because the conduct complained of here has been preempted by the Labor Management Relations Act, commonly known as the Taft-Hartley Law, and directs the Court's attention to Sec. 8-D-4, subdivisions A and B, in support of their claim in this respect.

The plaintiff has submitted to the Court the case of Erie Railroad Co. v. Local No. 1286, International Longshoremen's Association, et al., reported in 117 Fed. Sup., page 157, and relies substantially on that case as controlling of this dispute.

The defendants have cited to the Court a number of cases, and they seem to rely largely on the case of International Rice Milling Co. v. National Labor Relations Board, 183 Fed. 2nd, page 21, and a case in the Western District of Michigan, the S. E. Overton Company v. International Brotherhood of Teamsters, etc., reported in 115 Fed. Supp., page 764, and also a recent case not yet reported in the official volumes, but which is reported in a labor service, C. C. H. Labor Service, the case of Aetna Freight Lines v. Clayton, et al., a case decided at the October term in the Second Circuit; and also relies upon the Garner case, Garner v. Teamsters' Union, as I recall it, in 346 U. S., 485. I allude to these cases because when we adjourned here last Friday, after listening to certain testimony and the arguments of counsel, which were brief, I felt that I should, before disposing of this matter, read the cases cited, and read them all, which I have done; I have read every one of the cases, and some of them twice.

First of all, I will dispose of the first question raised by the defendants, and that is that the Court lacks jurisdiction because of the lack of any claim of diversity of citizenship, and the jurisdictional amount. With respect to that the Court holds that that claim is not well founded. The same issue was raised in the Erie Railroad Company case. The Court in that case disposed of that particular issue by stating, after referring to the contention that the Court lacked jurisdiction for those reasons, as follows:

"Neither one of these contentions is sustainable."

Then the Court quotes from Title 28, Sec. 1337, U. S. Code, which reads as follows:

> "The District Courts shall have original jurisdiction of any civil action or proceeding arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

That is a statutory ground of jurisdiction, based upon the Constitutional authority alluded to in the Bill of Complaint.

I think I should also point out that the case relied upon by the defendant, the Overton case, in the Western District of Michigan, also disposes of that contention adversely to the defendant here. It was urged in that case that the Court lacked jurisdiction for the same reasons, because there was no diversity, and because of the lack of the jurisdictional amount. Judge Starr in that Opinion, after referring to Sec. 1337, Title 28 of the United States Code, goes on to say:

> "That Section confers original jurisdiction on District Courts in any civil action or proceeding arising under any act of Congress regulating commerce. Under this section of the Code the jurisdiction of the Court does not rest on the amount involved or diversity of citizenship."

So, in those two cases the question here was squarely involved; it was squarely involved in those two cases, and it was decided in favor of the plaintiff in both cases.

So this Court holds that it is not deprived of jurisdiction of the subject matter of this suit by reason of any lack of diversity or lack of jurisdictional amount.

The Court further holds that it does have jurisdiction of this dispute, under the commerce clause of the Constitution, and Sec. 1337, Title 28, U. S. Code.

In this case the defendant carrier had a contractual obligation and a statutory duty to make delivery of the merchandise in question. There are certain cases, including the case of Montgomery, Ward & Co. v. Northern Pacific R. R. Co., 128 Fed. Supp. 475, and Railway Company v. Pacific Co., 215 Fed. 2nd 126, which in effect held a carrier liable for damages for failure to make delivery where they were confronted with picketing situations.

The defendant contends here that the subject matter of this dispute is pre-empted by the Taft-Hartley Act. That same claim was made in the Erie R. R. Co. case, 117 Fed. Supp. And, more specifically, the defendant here claims that this Court lacks jurisdiction to issue an injunction by reason of the Norris-LaGuardia Act, and I think also relying on the National Labor Relations Act, and the Taft-Hartley Act.

In this case there is no labor dispute between the plaintiff and the defendant. The labor dispute is between the Wolohan Company and the defendants. All of the cases cited by the defendant are cases involving labor disputes between the petitioner and the defendant, of one kind or another. The defendants here were not picketing the railroad or its employees because of any labor dispute between the railroad and its employees. What they were doing was in the nature of a secondary boycott. But, sig-

nificantly here, the relief is sought not by the employer involved in a labor dispute, but by another party not involved in that labor dispute, only incidentally as it is prevented from making delivery of the cars in question.

The Court finds that there is substantial testimony here tending to bear out the allegations in the Bill of Complaint. The Court finds that the plaintiff railroad company had under its custody certain cars of merchandise shipped from without the State into the State of Michigan for delivery to the Wolohan Company, and that the plaintiff carrier was prevented from making delivery of those cars to the Wolohan Company by reason of certain acts of the defendants in connection with picketing the premises of the Wolohan Company; that this picketing was peaceful, non-violent, but nevertheless presented a situation which made it impossible for the plaintiff railroad to make delivery of the cars without running the risk of serious injury to some of the pickets; and therefore the railroad was justified in not taking the chance of death or injury, bodily injury, to the plaintiff. The Court finds that the railroad was prevented from making delivery of the cars in question, and was then confronted with the possibility of incurring substantial demurrage charges, or other damages, for failure to make delivery to the Wolohan Company, and has sought injunctive relief in this Court to restrain the picketing insofar as it affects the delivery of merchandise from the plaintiff railroad to the plaintiff's yard.

It is interesting to note that in the International Rice Milling Co. case, cited by defendant, 183 Fed. 2nd, the railroad companies involved there did apply, during the dispute that existed, to the District of Louisiana to have picketing on its tracks enjoined, and a preliminary injunction was issued against the union in that case ordering it to cease interfering with the railroad company's business with petitioner's mills. In that case, the peti-

tioner, International Milling Company, had filed charges with the National Labor Relations Board, claiming a violation of the same section as are invoked by the defendant here, of the Taft-Hartley Act, Sections 8-D-4, Sub-divisions A and B, and the Trial Examiner in that case found that the union had violated the section in question. On appeal the Board issued its decision dismissing the petitioner's charges, which were the basis of the appeal in that case.

The Court there quite properly found that the National Labor Relations Board had exclusive jurisdiction because the petitioning employer had sought relief before the National Labor Relations Board, and the issue there was not at all the issue in this case. As a matter of fact, in all of the cases cited by the defendant, the petitioners were themselves involved in labor disputes, which, in my opinion, distinguishes those cases from the case before the Court.

In the Overton case, decided in the Western District of Michigan, there had been proceedings taken before the National Labor Relations Board, and also involving complaints filed with the National Labor Relations Board in two separate cases, which Judge Starr alluded to in his opinion and referred to in reaching his decision, indicating that the record in those cases shows that the acts charged against the defendant union, their agents and employees, and against the defendant carriers in that case, were in fact merely the refusal of the carrier's employees, who are members of the union, to cross the picket lines established by the International Union at the plaintiff's factory.

This Court feels that the Erie Railroad Company case is controlling of the subject matter of this suit. Seldom does a case involve such similarity of facts and issues as we find in the Erie Railroad Company case, even to the

extent of a similar type of business, which, of course, is not at all important. Apparently no appeal was taken in the Erie Railroad Company case. If so, it was not called to the Court's attention. And, interesting enough, the Judge who wrote the opinion in the Erie Railroad Company case also wrote the opinion, I think, in the Aetna Freight Lines case, which was appealed. By way of passing, I would like to point out with respect to the Aetna Freight Lines case that in that case the carrier itself was being picketed. As I remember it, the Union was trying to get a man at the dock or at the terminal to take charge of things, and they were picketing the carrier, to try to compel the carrier to hire and employ a union member to help in the loading and unloading at the terminal. So, a labor dispute existed there between the carrier and the union, as I think we find in all of the cases cited by the defendants that there was a labor dispute, or a claim of a labor dispute, between the petitioner and the defendant in those cases.

The Court is of the opinion that the Erie Railroad Company case [117 F. Supp. 157 (W. D. N. Y., 1953)] is controlling here. This Court holds that it does have jurisdiction, under the commerce clause, and that it does have jurisdiction to issue an injunction, under the broad equity powers of this Court.

The Court further holds that the lack of violence in the picketing is not material, inasmuch as the railroad is prevented from carrying out its contractual responsibility and performing its statutory duties.

Therefore, the motion of the plaintiff for a temporary injunction is granted.

APPENDIX C.

AGREED STATEMENT OF CASE.

This is an appeal from an order of the District Court for the Eastern District of Michigan, dated January 9, 1956, enjoining certain picketing being conducted by the Appellants.

The Bill of Complaint, dated December 27, 1955, filed by the Appellee, Grand Trunk Western Railroad Company (hereinafter referred to as the Railroad) alleged, and the District Court found that there was substantial testimony tending to bear out the allegations, that a labor dispute existed between the Wolohan Elevator and Lumber Company (hereinafter referred to as the Lumber Company) and Local No. 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (hereinafter referred to as the Union), the nature of which was unknown to the Railroad. The Complaint further alleged that the dispute resulted in the suspension of operations at the lumber company.

Other material allegations of the complaint, for which the Court found substantial testimony, are as follows:

> "VI. That said picketing was since December 15, 1955, and up to the present time is maintained by the striking employees of said Company marching over and across the access ways to said Plant, including the tracks of your Plaintiff, in an uninterrupted line, the persons comprising said line marching so close together that it is impossible for the Plaintiff to utilize said tracks in gaining access to said Plant without the danger of injuring said picketing employees.

"VII. That on December 16, 1955, it was tendered for delivery to said Wolohan Elevator and Lumber Company Three (3) carloads of lumber consigned to said Company as an interstate commerce shipment and that delivery was attempted by said Railroad Company over its tracks leading into the said Wolohan Elevator and Lumber Company premises; that when such delivery was attempted, the picketing employees hereinbefore referred to, including the Defendants named herein, obstructed the tracks of the said Company at the point hereinbefore described so that delivery of said cars of lumber was prevented by obstructing said tracks; that because of the danger of injury to said picketing employees, the employees of the Railroad Company were prevented from entering the premises of the Lumber Company and thereby prevented from delivering said interstate commerce shipments.

* * * * * * * *

"IX. Plaintiff further says that its Assistant Superintendent in charge of the shipments hereinbefore referred to and in his capacity as a representative of Plaintiff, contacted the Defendant, Edward Goram, who, your Plaintiff believes, is the business agent of said Defendant Union on each of the dates hereinbefore referred to and requested the said Goram to permit Plaintiff to deliver said rail cars of merchandise in interstate commerce over the tracks of said Plaintiff Company and into the premises of said Wolohan Elevator and Lumber Company but was advised by the said Goram then and there in language following: 'We will not get off the track.'

"X. Your Plaintiff further says that it is not a party to nor is it concerned with the labor dispute which it is alleged exists between the said Wolohan Elevator

and Lumber Company and its employees and that this Plaintiff is concerned only with its responsibility as a common carrier of freight by rail in interstate commerce by virtue of the statutes of the United States and the regulations of the Interstate Commerce Commission promulgated thereunder to provide reasonably adequate service over its lines for shippers and receivers of freight by rail, which responsibility your Plaintiff is compelled, by law, to discharge.

"XI. That your Plaintiff is justified in concluding and does conclude that it cannot safely enter into and upon the premises of the said Wolohan Elevator and Lumber Company for the purpose of discharging its lawful duty as a rail carrier in interstate commerce unless aided by injunction of this Court and that irreparable injury will result to the Plaintiff unless, by injunction of this Court, it may be aided in the discharge of its lawful duty and the Defendant Union and its agents and representatives, including the individual Defendants herein named, prevented from interfering with or obstructing access to the premises of the said Wolohan Elevator and Lumber Company over the rails of the said Plaintiff. Your Plaintiff further alleges that it is fearful that great injury and damage will result to the members of the Defendant Union herein named, including the Three (3) individual Defendants, if your Plaintiff attempts to make delivery of said interstate commerce shipments over its tracks and into the Plant of the said Wolohan Elevator and Lumber Company while said picketing is in progress.

"XII. Plaintiff further says that it is fearful of its being presently in violation of the rules and regulations of the Interstate Commerce Commission by reason of its failure to make delivery of said interstate

> shipments as provided thereby and that in order to prevent irreparable injury and damage to this Plaintiff and citation of it by the Interstate Commerce Commission aforesaid, it is necessary that a temporary injunction be issued to aid your Plaintiff during the pendency of said cause in the discharge of its duty as an interstate common carrier."

The Bill of Complaint concluded with a demand for a temporary as well as a permanent injunction restraining the Union and its members from interfering in any manner with the Railroad's access to the lumber company plant.

The defendants appeared at the hearing on the motion for temporary injunction, and insofar as the time for answer had not expired, with the consent of the court and the Railroad interposed among other defenses the following defense, which is the sole issue in these proceedings, as part of an oral answer:

> That the District Court does not have jurisdiction to grant the relief requested in the Bill of Complaint for the reason that this cause involves and grows out of a labor dispute and that pursuant to the act of March 23, 1932 (U. S. C. Supp. VII, Title 29, sections 101-115) commonly known as the Norris-LaGuardia Act, the court does not have jurisdiction to issue a temporary injunction as prayed for in the Bill of Complaint.

The record reveals that the Union and Lumber Company are engaged in a labor dispute. In connection with this dispute, appellant union members Edward Goram, Basil Meeker and Hollis Carson engaged in peaceful picketing on Genesee Street in Davison, Michigan. They carried signs which read:

"Employees of Wolohan Company out on strike against substandard wages and working conditions."

Genesee Street, which runs north and south, is a public street adjacent to property leased by the Lumber Company from the Railroad. A straight or side track which runs east and west intersects Genesee Street. This side track connects, about fifteen feet east of Genessee Street, with a "hole" or "Wolohan" track.

On December 16, 1955, the Railroad, which is an interstate carrier, had five carloads of merchandise for delivery to the lumber company. These cars were moved from the train depot toward the lumber company by means of the side track which intersects Genesee Street. The three pickets, referred to above, and others, were walking at regular intervals back and forth on Genesee Street and at the same time crossing the Railroad's side track. They travelled a total of about fifteen feet, including the distance between the rails, as they picketed. The picketing was at all times peaceful and truthful, but was, nevertheless, so conducted that some one of the pickets was at all times between the rails of the Plaintiff railroad and prevented the Plaintiff's moving of its cars into the plant without hazard to the pickets.

A moving picture film to support the Plaintiff's contention that the track was obstructed by the pickets was offered and received in evidence.

Upon instructions of the Railroad's assistant division superintendent, who was walking alongside of the cars as they were moved toward the lumber company, the train conductor ordered that the movement of the cars be halted. The five cars were placed on a "post" track about one hundred feet from the lumber company's yard. Two of these cars were subsequently unloaded by employees of

the lumber company. Events similar to those occurring on December 16, 1955, also occurred on December 19. The District Court, in its opinion, stated:

> "The Court finds that the plaintiff railroad company had under its custody certain cars of merchandise shipped from without the State into the State of Michigan for delivery to the Wolohan Company, and that the plaintiff carrier was prevented from making delivery of those cars to the Wolohan Company by reason of certain acts of the defendants in connection with picketing the premises of the Wolohan Company; that this picketing was peaceful, non-violent, but nevertheless presented a situation which made it impossible for the plaintiff railroad to make delivery of the cars without running the risk of serious injury to some of the pickets; and therefore the railroad was justified in not taking the chance of death or injury, bodily injury, to the plaintiff. The Court finds that the railroad was prevented from making delivery of the cars in question, and was then confronted with the possibility of incurring substantial demurrage charges, or other damages, for failure to make delivery to the Wolohan Company, and has sought injunctive relief in this Court to restrain the picketing insofar as it affects the delivery of merchandise from the plaintiff railroad to the plaintiff's yard."

The District Court also stated:

> "In this case the defendant carrier had a contractual obligation and a statutory duty to make delivery of the merchandise in question. There are certain cases, including the case of Montgomery, Ward & Co. v. Northern Pacific R. R. Co., 128 Fed. Supp. 475, and Railway Company v. Pacific Co., 215 Fed. 2nd 126, which in effect held a carrier liable for damages for

failure to make delivery where they were confronted with picketing situations."

The Union's contention that the Norris-LaGuardia Act deprived the District Court of jurisdiction to enjoin the picketing was rejected. The District Court reasoned:

> "In this case there is no labor dispute between the plaintiff and the defendant. The labor dispute is between the Wolohan Company and the defendants. All of the cases cited by the defendant are cases involving labor disputes between the petitioner and the defendant of one kind or another. The defendants here were not picketing the railroad or its employees because of any labor dispute between the railroad and its employees. What they were doing was in the nature of a secondary boycott. But, significantly here, the relief is sought not by the employer involved in a labor dispute, but by another party not involved in that labor dispute, only incidentally as it is prevented from making delivery of the cars in question."

In granting a temporary injunction the District Court concluded:

> "The Court is of the opinion that the Erie Railroad Company case [117 F. Supp. 157 (W. D. N. Y. 1953)] is controlling here. This Court holds that it does have jurisdiction, under the commerce clause, and that it does have jurisdiction to issue an injunction, under the broad equity powers of this Court.
>
> "The Court further holds that the lack of violence in the picketing is not material, inasmuch as the railroad is prevented from carrying out its contractual responsibility and performing its statutory duties.
>
> "Therefore, the motion of the plaintiff for a temporary injunction is granted."

It is agreed that the injunction was properly issued unless the Court has been deprived of jurisdiction to issue a temporary injunction by the Norris-LaGuardia Act (U. S. C., Supp. 7; Title 29, Sec. 101-115).

Saul Cooper, /s/
Saul Cooper,
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Milwaukee 3, Wisconsin,
and
John J. Fitzgerald,
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Saginaw, Michigan,
Counsel for Appellants.

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Detroit 26, Michigan,
Counsel for Appellee.

Approved by the Federal District Court for the Eastern District of Michigan, Northern Division, this 6th day of July, 1956.

Ralph M. Freeman, /s/
Ralph M. Freeman,
District Judge.

JUDGMENT.

[Formal Parts Omitted.]

At a session of said Court held at the Federal Building in the City of Bay City, Bay County, Michigan, on the 6th day of January, 1956.

Present: Hon. Ralph Freeman, United States District Judge.

This cause came on to be heard upon Plaintiff's Motion for a Temporary Injunction based upon the plaintiff's sworn Bill of Complaint and the Affidavit of Edward T. Rose, in which it is alleged, under oath, that the Plaintiff is being prevented by unlawful acts of the Defendants from operating as a common carrier of freight by rail in interstate commerce in the delivery of cars of merchandise consigned to the Wolohan Elevator and Lumber Company at Davison, Michigan, it being further alleged that the Defendants are obstructing ingress and egress to the plant of Wolohan Elevator and Lumber Company with pickets, including the individual Defendants named in Plaintiff's Bill of Complaint who are using their bodies so that Plaintiff may not propel its cars and locomotives over and along its tracks into the premises of said Wolohan Elevator and Lumber Company without incurring risk of running over the Defendants, their representatives and agents, all of which acts are unlawful; Plaintiff further claiming that the Defendants are preventing it from performing its duty as an interstate carrier of merchandise by rail in accordance with the rules and regulations of the Interstate Commerce Commission, and further that unless a temporary injunction issues Plaintiff will be compelled to elect between holding the rail cars now in its possession and destined to the Wolohan Elevator and Lumber Company or returning them to the consignees at great cost and ex-

pense; and the Court having heard the testimony of witnesses and having been exhibited moving pictures from which it appears to the Court that the Defendants, and their agents, are guilty of the acts complained of, viz.: Marching back and forth upon the right-of-way of the Plaintiff and physically obstructing ingress and egress to the plant of the Wolohan Elevator and Lumber Company at Davison, Michigan, so that Plaintiff is unable to move its rail cars into said plant without endangering the lives of said pickets, and that Plaintiff is entitled as of right to free access to said plant of the Wolohan Elevator and Lumber Company with its locomotives and cars in the discharge of its duty as a common carrier by rail of freight under the jurisdiction of the Interstate Commerce Commission.

Now, Therefore, It Is Ordered That the Defendants, Local No. 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Edward Goram, Basil Meeker, Hollis Carson and their officers, agents, servants, employees and attorneys and all other persons acting in concert or participation with them who shall receive actual notice of this Order by personal service or otherwise during the pendency of this cause or until further Order of this Court are enjoined and restrained from:

(A) Interfering in any manner whatsoever with access by said Plaintiff to and from the plant of said Wolohan Elevator and Lumber Company located at Davison, Michigan, over the rails of the said Plaintiff and the connecting tracks leading into said plant for the purpose of switching interstate commerce freight over said tracks to and from the plant of said Company.

(B) Hampering or interfering with any of the Plaintiff's agents, representatives or employees in the discharge

of their duties as an interstate commerce carrier by rail of commodities consigned to or from said plant over the rails of said Plaintiff.

(C) Loitering, grouping, congregating or marching in or near the right-of-way of said Plaintiff leading to said plant in such numbers and in such manner as may interfere with or be intended to interfere with the lawful ingress and egress to and from said plant by said Plaintiff in the lawful discharge of its duties as a corporation engaged in the transportation of commodities by rail in interstate commerce.

(D) That said Defendants be required to keep a sufficient distance from the tracks of the Plaintiff so as not to interfere with the safe operation of the cars and locomotives of said Plaintiff over said tracks.

It is Further Ordered That as a condition of the issuance of this Order the Plaintiff will file its bond in the sum of One Thousand Dollars ($1,000.00) conditioned for the payment of such costs or damages as may be incurred or suffered by the Defendants or any of them who may be found to have been wrongfully enjoined, said bond to be approved by this Court or by the Clerk thereof.

This Order is issued at 4 p. m. this 6th day of January, 1956.

Ralph Freeman, /s/
Ralph Freeman,
United States District Judge.

NOTICE OF APPEAL.

[Formal Parts Omitted.]

Notice is Hereby Given, that defendants above named hereby appeal to the United States Court of Appeals for the Sixth Circuit from the Order granting a temporary

injunction against interference with access by plaintiff to and from Wolohan Elevator and Lumber Company at Davison, Michigan, over plaintiff's rails and the connecting tracks leading into said plant, for the purpose of switching freight over railroad tracks to and from said company, entered in this action on the 9th day of January, 1956.

Dated this 31st day of January, 1956.

Saul Cooper, /s/
Saul Cooper,
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Milwaukee 3, Wisconsin,

J. J. Fitzgerald, /s/
J. J. Fitzgerald,
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Saginaw, Michigan,

George S. Fitzgerald,
2550 Guardian Building,
Detroit, Michigan.

FILED

APR 5 1957

JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 526.

LOCAL NO. 332, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, a Labor Union With Offices at Flint, Genesee County, Michigan, and EDWARD GORAK, BASIL MEEKER and ROLLIE CARSON, Individually and as Members of Said Local Union,

Petitioners,

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan Corporation,

Respondent.

BRIEF FOR RESPONDENT

In Opposition to Petition for a Writ of Certiorari To the Court of Appeals for the Sixth Circuit.

Cole, H. Salzer, Sr., of
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Attorneys for Respondent.

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In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 826.

LOCAL NO. 332, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, a Labor Union With Offices at Flint, Genesee County, Michigan, and EDWARD GORAM, BASIL MEEKER and HOLLIS CARSON, Individually and as Members of Said Local Union,

Petitioners,

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan Corporation,

Respondent.

BRIEF FOR RESPONDENT

In Opposition to Petition for a Writ of Certiorari To the Court of Appeals for the Sixth Circuit.

Respondent respectfully urges that Petitioners' request that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on December 12, 1956, be denied.

CITATIONS TO OPINIONS BELOW.

Respondent accepts as accurate the reference to the Lower Court Opinions cited in Petitioners' statement.

JURISDICTION.

Respondent denies that Petitioners are entitled to relief under Title 28, U. S. Code, Section 1254 (1).

COUNTER-STATEMENT OF QUESTION PRESENTED.

Does the Federal District Court have jurisdiction to issue a Temporary Injunction, after hearing, at the request of an interstate carrier by rail, to restrain picketing employees, who are engaged in a labor dispute with a consignee employer, from obstructing the rail tracks leading to the premises of the employer by loitering, grouping, congregating or marching on or near the carrier's tracks in such manner as to hamper and interfere with the carrier's discharge of its duty to deliver interstate shipments to the employer's premises?

STATUTES INVOLVED.

The statutory provisions involved are Sections 1, 7 and 13 of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U. S. Code, Sections 101, 107 and 113 (1956).

COUNTER-STATEMENT OF THE CASE.

We accept Petitioners' Statement of the Case as far as it goes. To present a true picture of the situation, we submit the following additional statement:

(A) While the picketing was at all times peaceful and truthful, it was, nevertheless, so conducted that some of the pickets were at all times between the rails of the Plaintiff Railroad and prevented the Plaintiff's moving of its cars into the plant without hazard to the pickets (Petitioners' Appendix C—page 27).

(B) A moving picture film to support the Plaintiff's contention that the track was obstructed by the pickets

was offered and received in evidence (Petitioners' Appendix C—page 27).

(C) While the picketing was peaceful and non-violent, it, nevertheless, presented a situation which made it impossible for the Plaintiff Railroad to make delivery of the cars without running the risk of serious injury to some of the pickets and, therefore, the Railroad was justified in not taking the chance of death or injury to the pickets (Petitioners' Appendix C—page 28).

(D) When Respondent's agents requested the pickets to permit delivery of the rail cars of merchandise, they were advised by one (1) of Petitioner's picketing members in the following language: "We will not get off the track." (Petitioners' Appendix C—page 24).

(E) The Court of Appeals did not adopt the District Court's reasoning "without further explanation." It specifically found and explained that:

> "District Judge Freeman did not enjoin peaceful picketing but only enjoined and restrained the appellant labor union and its members and the named individual appellants from interfering with the access of the appellee railroad company, over its rails and connecting tracks, to the industrial plant involved in this litigation; from loitering and congregating or marching in or near the right-of-way of the appellee leading to the plant, in such manner and in such numbers as to interfere with or be intended to interfere with the lawful ingress and egress to and from the plant by the appellee carrier in the lawful discharge of its duties of transporting by rail commodities in interstate commerce; and by requiring appellants to keep a sufficient distance from the tracks of the appellee so as not to interfere with the safe operation of its cars or locomotives over the aforementioned tracks." (Petitioners' Appendix B—pages 12 and 13.)

ARGUMENT.

It is agreed by Petitioners that the Injunction issued by the District Court was properly issued unless the Court was deprived of jurisdiction to issue a Temporary Injunction by the Norris-LaGuardia Act, U. S. Code, Supp. 7; Title 29, Sections 101-115 (Petitioners' Appendix C—page 30). The District Court's jurisdiction is the only question involved. Petitioners urge that the case is one which grows out of a labor dispute within the meaning of Section 13 (a) of the Norris-LaGuardia Act which reads as follows:

> "(a) A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; * * *."

I. This Case Is Not One Which Grows Out of a Labor Dispute Within the Meaning of Section 13 of the Norris-LaGuardia Act.

In the first place, there is no dispute between the Railroad Company and Petitioner Union. The Railroad is not concerned with the dispute between the Petitioner Union and the employer, Wolohan Elevator and Lumber Company. It is concerned only with the delivery of merchandise shipped to the Wolohan Company. While the Railroad Company may be interested in the revenues derived from handling shipments into the Wolohan Company's elevator, such incidental interest is not the type of "direct or indirect interest" with which the statute is concerned. All of the contentions urged by Petitioners' counsel in pages 4, 5 and 6 of his Brief were urged in *Erie Railroad Company vs. Local 1286, International Longshoremen's Association, et al.*, 117 Federal Supp. 157

(W. D. N. Y. 1953) and in *Pacific Gamble Robinson Company vs. Minneapolis and St. Louis Railway Company*, 85 Federal Supp. 65. The Court in the *Erie Railroad* case, *supra*, has this to say:

> "Do the plaintiffs have 'an interest' such as brings it within the provisions of the Norris-LaGuardia Act, 29 U. S. C. A. Section 101 *et seq.*? Holding that the court has jurisdiction is a sufficient answer in the negative. Here there is no labor dispute between plaintiffs and defendants."

In *Pacific Gamble Robinson Company vs. Minneapolis and St. Louis Railway Company*, 85 Federal Supp. 65, the Court has this to say:

> "The relevant part of Paragraph (a), 29 U. S. C. A. Section 113, requires that the persons involved in the controversy possess direct or indirect interests in the same industry, trade, craft, or occupation. The interest involved must be with respect to labor matters. For the matters over which the labor dispute must arise and concerning which the statute is operative, are labor matters. The purpose of the statute is to affect labor matters, not merely an interest in an industry, regardless of its relation to labor matters. Moreover, both parties must possess the required interest. Otherwise no relationship to a labor dispute would exist between the two.
>
> "In the instant case defendant's employees—interveners—have no interest in a labor sense in whether plaintiff's employees strike or whether the objectives sought by the strike are attained. Interveners are not seeking to exercise any labor rights against plaintiff. They have no interest in plaintiff's labor policy as far as this matter is concerned. Their actions are not in support of the plaintiff's employees. They do not belong to the same union, nor do they have an agree-

ment not to cross the picket lines of plaintiff's employee's union, as did the defendants in *Southeastern Motor Lines v. Hoover Truck Co.*, D. C., 34 F. Supp. 390."

It can be said with equal force in the case at bar that the Plaintiff Railroad has no interest in a labor sense in whether Defendant Union's members strike or whether the objectives sought by the strike are attained. It has no interest in the controversy between the consignee and its employees; its action is not in support of either party to the controversy. It is concerned only with the discharge of its statutory duty and in avoiding the likelihood of a penalty being assessed it for its failure to perform that duty. *Montgomery Ward and Company vs. Northern Pacific Terminal Company of Oregon*, 128 Federal Supp. 475.

The Petitioners' claim that this case grows out of a labor dispute and that both the Railroad and the Union have economic interests in the industry where the labor dispute exists was answered in *Pacific Gamble Robinson Company vs. Minneapolis and St. Louis Railway Company*, 85 Federal Supp. 65, in the following language (page 67):

> "No interest in plaintiff's labor policies has caused interveners to refuse to switch cars into the tracks where plaintiff's warehouse is located. Mere remote economic interest arising from the desirability of plaintiff's continued shipping over defendant railroad's lines cannot furnish the required interest. If it did, then no end to the conception of labor disputes with respect to common carriers could be drawn logically."

II. The District Court Did Not Enjoin "Picketing."

No effort was made by the District Court to interfere with peaceful picketing of the Wolohan plant by the Petitioner Union. The Court was careful to preserve that right. It merely:

> "enjoined and restrained the appellant labor union and its members and the named individual appellants from interfering with the access of the appellee railroad company, over its rails and connecting tracks, to the industrial plant involved in this litigation; from loitering and congregating or marching in or near the right-of-way of the appellee leading to the plant, in such manner and in such numbers as to interfere with or be intended to interfere with the lawful ingress and egress to and from the plant by the appellee carrier in the lawful discharge of its duties of transporting by rail commodities in interstate commerce; and by requiring appellants to keep a sufficient distance from the tracks of the appellee so as not to interfere with the safe operation of its cars or locomotives over the aforementioned tracks;" (Petitioners' Appendix B—pages 12 and 13.)

The following cases support the right of the District Court to issue its Injunction:

Southern Pacific Company vs. Cannery Warehousemen, 127 Federal Supp. 703 (D. C. Oregon 1954);

Erie Railroad Company v. Local 1286, International Longshoremen's Association, et al., 117 Federal Supp. 157 (W. D. N. Y. 1953);

Louisville and Nashville Railroad Company v. Local Union No. 432, 104 Federal Supp. 748 (S. D. Alabama 1952);

Illinois Central Railroad Company vs. International Brotherhood, 90 Federal Supp. 640 (W. D. Louisiana 1950);

Pacific Gamble Robinson Company vs. Minneapolis and St. Louis Railway Company, 85 Federal Supp. 65 (D. C. Minnesota 1949).

Petitioners cite two cases which they contend support their theory. *Matson Navigation Company vs. Seafarers Union*, 100 Federal Supp. 730 (D. C. Maryland 1951); *Great Northern Railway Company vs. Lumber and Sawmill Workers Local Union*, 140 Federal Supp. 393 (D. C. Montana 1956).

The *Matson Navigation Company* case, *supra*, was a case in which both Plaintiff and Defendant were parties to a labor dispute. The relief sought was against picketing.

In *Great Northern Railway Company v. Lumber and Sawmill Workers Local Union*, 140 Federal Supp. 393 (D. C. Montana 1956), the District Judge expressly avoided passing on the question of the applicability of the Norris-LaGuardia Act. At page 75 of the Opinion, the Court states:

> "However, it appears to the Court to be unnecessary to decide whether or not the controversy between the defendants and the plaintiff in this case constitutes a labor dispute under the provisions of the Norris-LaGuardia Act, because even if the Norris-LaGuardia Act and the Clayton Act do not apply in this case, the complaint is still insufficient, under the general law relating to injunctions to warrant the issuance of an injunction as prayed for."

III. The Question Raised by This Case Has Not Been Decided in a Manner Inconsistent With the Decisions of This Court.

The only case cited by Petitioners in support of their statement that the District Court cases have "been decided in a manner inconsistent with the decisions of this Court" are:

Milk Wagon Drivers Union vs. Lake Valley Farm Products, 311 U. S. 91, 93 (1940) and *United States vs. Hutcheson*, 312 U. S. 219, 235 (1941).

We submit that neither case supports their claim. The *Milk Wagon Drivers Union* case, *supra*, holds:

(A) That both the Plaintiff and Defendant unions were involved in a labor dispute; and

(B) That an allegation that there is a violation of the Sherman Act does not exempt the case from the provisions of the Norris-LaGuardia Act.

United States vs. Hutcheson holds merely that picketing, as indulged by the involved union, did not constitute a violation of either the Sherman Act or the Clayton Act. There most certainly was a labor dispute between the involved unions in that case which resulted in the indictment of the American Federation of Labor Union.

United States vs. United Mine Workers of America, 33 U. S. 258 (67 Supreme Court 677) sustains the interpretation given the Norris-LaGuardia Act by the District Court and the Court of Appeals in the instant case. In giving its interpretation to Sections 4 and 13 of the Norris-LaGuardia Act, the Court says (page 687):

> "If we examine Sections 4 and 13, on which defendants rely, we note that they do not purport to strip completely from the federal courts all their pre-existing powers to issue injunctions, that they withdraw this power only in a specified type of case, and that this type is a case 'involving or growing out of any labor dispute.' Section 13, in the first instance, declares a case to be of this type when it 'involves persons' or 'involves any conflicting or competing interests' in a labor dispute of 'persons' who stand in any one of several defined economic relationships.

And 'persons' must be involved on both sides of the case, or the conflicting interests of 'persons' on both sides of the dispute." (Emphasis ours.)

It is evident from this language that the Court did not intend to deprive the "innocent bystander" of his right to judicial protection where he becomes the object of injury from the action of an employer or employee engaged in a labor dispute.

CONCLUSION.

For the foregoing reasons, we submit that the Petition for a Writ of Certiorari be denied.

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Dated: April 1, 1957.

APR 15 1957

JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 826.

LOCAL NO. 332, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, a Labor Union with Offices at Flint, Genesee County, Michigan, and EDWARD GORAM, BASIL MEEKER and HOLLIS CARSON, Individually and as Members of Said Local Union,
Petitioners,

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY,
a Michigan Corporation,
Respondent.

REPLY BRIEF

In Support of a Petition for a Writ of Certiorari to the Court of Appeals for the Sixth Circuit.

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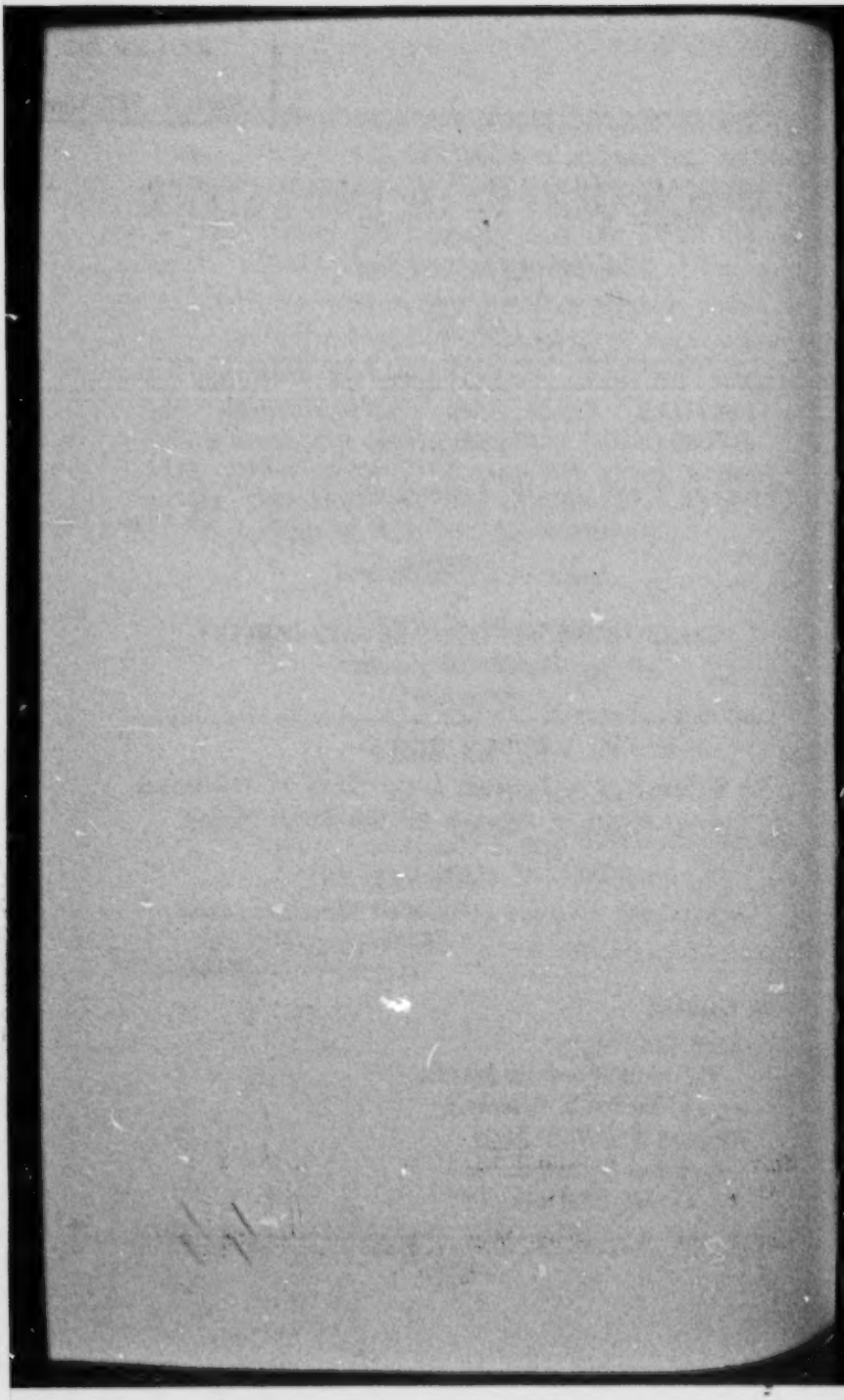

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vs.

GRAND TRUNK WESTERN RAILROAD COMPANY,
a Michigan Corporation,
Respondent.

REPLY BRIEF

In Support of a Petition for a Writ of Certiorari to the Court of Appeals for the Sixth Circuit.

I. Immaterial Whether Courts Below Enjoined "Patrolling" Within the Meaning of Section 4 of the Act.

The Court below held and the Respondent's brief in opposition urges that peaceful patrolling within the meaning of Section 4 of the Norris-LaGuardia Act was not restrained. The correctness of this view is not before the Court. The only question here is whether this case is one which involves or grows out of a labor dispute

within the meaning of Section 13 of the Act thus depriving the Courts below of jurisdiction to issue an injunction without first complying with Section 7. If it is a case involving or growing out of a labor dispute, the decisions below are clearly erroneous; because Section 7 of the Act declares that "No Court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute" except after certain findings have been made. The finding that the public officers charged with the duty of protecting the Railroad's property failed to provide such protection was not made in this case [Section 7 (e)]; hence, it is unnecessary to determine whether the Union's conduct comes within the absolute protections of Section 4.

II. The Decisions Below Construed the Act in a Manner Inconsistent With the Decisions of This Court.

The Respondent's brief in opposition contends that the decision of this Court in *Milk Wagon Drivers Union v. Lake Valley Farm Products,* 311 U. S. 91 (1940), is distinguishable on its facts from the case at bar. This, of course, is readily conceded. Nevertheless, the opinions in the Courts below construe the words "direct or indirect interest" in Section 13 of the Act as modifying the words "labor dispute" (R. 29); whereas the decision of this Court in the *Milk Wagon Drivers Union* case makes it clear that the statutory language "direct or indirect interest" modifies "industry, trade, craft or occupation." 311 U. S. at 93. The legal consequences of such variance in construction need not be labored.

It is true that the provisions of Section 13 (a) of the Act require that both parties to the lawsuit have economic interests in the same industry, trade, craft or occupation. *United States v. Mine Workers,* 330 U. S. 258, 275 (1947). But, under Section 13 (b), it is equally clear, that the only

relevant interest is that possessed by the defendant. *Cf.: New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552, 560-61 (1938); *United States v. Mine Workers*, 330 U. S. 258, 313 (1947) (Frankfurter, J., concurring). For Section 13 explicitly defines a person having a "conflicting or competing" interest as one "against" whom relief is sought.

III. Decision in the Court Below Is in Conflict With the Seventh Circuit.

In addition to construing the Act in a manner contrary to the decisions of this Court, the decision of the Court below is in conflict with that in *R. G. Johnson Co. v. American Marchiando*, 184 F. 2d 377 (7th Cir., 1950).

In the *Johnson* case there was a labor dispute between Freeman, a mine owner, and his employees. Picketing by Freeman's employees prevented Johnson, a contractor, from delivering equipment to Freeman's mine. Johnson brought an action to prevent Freeman's striking employees from interfering with the delivery of equipment which he needed to fulfill a contract with Johnson. In holding the case to be one growing out of a labor dispute, the Court stated (184 F. 2d at 381):

> "Were Freeman [the mine owner] the plaintiff there is no question that a labor dispute existed under the provisions of the Norris-LaGuardia Act and under the Court decisions herein above cited. The fact that Johnson [the contractor] brought the action does not change the situation."
>
> Accord: *Shivera v. Long Island Lighting Co.*, 296 N. Y. 26, 69 N. E. 2d 233, 234-35 (1946). [State Anti-Injunction patterned after Norris-LaGuardia Act.]

The cause before this Court is indistinguishable in principle from the *Johnson Co.* decision. In both cases a labor

dispute existed between an employer and his employees, and in both cases a third party having contractual obligations to the employer brought a suit to enjoin the striking employees.* We respectfully suggest that the Court in the *Johnson Co.* case should have relied expressly upon Section 13 (b) of the Act rather than the more general approach to the question actually employed. But in any event, the conflict is clear.

For the foregoing reasons the Petition for Certiorari should be granted.

Respectfully submitted,

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* It has been uniformly recognized that the obligations of a common carrier under the Interstate Commerce Act cannot serve to enlarge the jurisdiction of Federal Courts in considering cases involving or growing out of a labor dispute. *East Texas Motor Freight Lines v. International Brotherhood*, 163 F. 2d 10, 12 (5th Cir. 1947); *Lee Way Motor Freight v. Keystone Freight Lines*, 126 F. 2d 931, 934 (10th Cir. 1942). *Cf.* similar holdings in cases involving suits by trustees in bankruptcy: *In re: Third Avenue Transit Corp.*, 192 F. 2d 971, 973 (2nd Cir. 1951); *International Brotherhood v. Quick Charge*, 168 F. 2d 513, 515-516 (10th Cir. 1948); *Anderson v. Bigelow*, 130 F. 2d 460, 462 (9th Cir. 1942).